

SENATE OF VIRGINIA



THOMAS K. NORMENT, JR.
3RD SENATORIAL DISTRICT
ALL OF GLOUCESTER, KING AND QUEEN,
KING WILLIAM, AND NEW KENT COUNTIES;
ALL OF THE CITY OF POQUOSON; PART OF ISLE OF
WIGHT, JAMES CITY, SURRY, AND YORK COUNTIES;
AND PART OF THE CITIES OF HAMPTON AND SUFFOLK
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COMMERCE AND LABOR
JUDICIARY
FINANCE AND APPROPRIATIONS
RULES

December 20, 2021

Ms. Muriel-Theresa Pitney
Clerk of Court
Supreme Court of Virginia
100 N. 9th St, 5th Floor
Richmond, VA 23219

Dear Ms. Pitney:

We, the Senate Republican Caucus, offer the following comments and suggested revisions to the draft Senate Map produced by the Special Masters on December 7, 2021. *See* Virginia Supreme Court Redistricting Rule 4. We start, however, by expressing our gratitude for the work already undertaken by the Special Masters. Establishing Virginia's voting districts is never an easy task, and this redistricting cycle has been no exception.

We offer the following modest changes to the Senate map proposed by the Special Masters for two compelling reasons. First, because the Special Masters did not consider the addresses of incumbent Senators as they produced these maps, many Senators of the same party are paired, or "double bunked," in the same voting district. The U.S. Supreme Court has consistently maintained that avoiding incumbent competition is a legitimate and worthy goal, *see, e.g., Bush v. Vera*, 517

U.S. 952, 964 (1996); *Karcher v. Daggett*, 462 U.S. 725, 740-741 (1983), and our proposal eliminates, or “de-bunks,” these occurrences without creating wholesale changes to the Senate voting districts proposed by the Special Masters.

Second, the Special Masters’ proposed Senate map removes three of the five current majority-Black voting districts in the Senate. Black voters have communicated their strong objections to this reduction to our Senate members and in comments to the Court, and we share their opposition to this unprecedented reduction. We believe it is a stain on this redistricting process to intentionally draw a map that has the impact of stripping Black districts from the Senate. Indeed, citizens and legislators working together as Democrats and Republicans on the Virginia Redistricting Commission committed to maintain the current number of Black-majority districts and never to produce any Commission map for consideration that reduced the number of these districts. This is the first map ever produced to wipe out those districts, and we hope that the Court will correct that. To be clear, the Black population in Virginia is growing, not shrinking, and we believe that it is not only indefensible to destroy Black districts, but that it also violates the federal Voting Rights Act.

We also respectfully request that the Court reject the map submitted by the Senate Democratic Caucus. While we may not agree on issues, we enjoy a close working relationship with our Democratic colleagues, built on genuine respect and admiration for one another. Therefore, it is with good humor, as well as an understanding of their duty to Democrats in the Senate to produce their perfect map, that we point out the obvious: This is *the* perfect map for Democrats in the Senate.

Simply put, their map represents a Democratic gerrymander, one that provides nearly the highest yielding partisan map for Democrats possible, and it does so in some very creative ways.

Because of this ingenuity, their map increases their majority to twenty-four districts and knocks Republican districts down to sixteen, even though Republicans won all three of this year's Commonwealth-wide elections. Clearly, that violates the "shall not favor one political party over another" criteria. Indeed, anything more than a passing glance at their proposed changes reveals this is a classic partisan gerrymander.

Finally, we believe it is critical that the Court reject the Senate Democratic Caucus's proposed changes to Black districts in the Senate. Their map reduces the number of majority-Black districts to two just as the Special Masters do. Given the size of Virginia's Black population (as well as its concentration in the southeastern part of the state), we do not believe that this retrogression would pass muster under Section 2 of the Voting Rights Act (as explained further below).

I. THE SENATE REPUBLICAN CAUCUS'S MAP IMPROVES ON THE WORK ACCOMPLISHED BY THE SPECIAL MASTERS AND RESTORES MAJORITY-MINORITY DISTRICTS.

We propose a map uniting some split regions and featuring five majority-minority districts located in southeastern Virginia between Hampton Roads and Richmond: Districts Twelve, Fourteen, Twenty, Twenty-One, and Twenty-Three. Districts Twelve and Fourteen are majority-Black districts encompassing Richmond and eastern Henrico and Chesterfield County. We also create a majority-minority District Twenty-One centered in Senator Lucas's hometown of Portsmouth and an adjacent District Twenty-Three including Senator Spruill's community of South Norfolk, thereby successfully separating these two incumbents; and shore up the majority-Black status of District Twenty, the Black voting-age population of which was dropped from 54 percent to 52 percent by the Senate Democratic Caucus's proposed addition of heavily white Poquoson.

These minor changes have the significant impact of restoring five majority-Black State Senate districts, which are likely to elect Black representatives, as compared to two on the Special Masters' map and on the Senate Democratic Caucus's map. The Senate Republicans' proposal would reorganize districts in only two locales—Richmond and Hampton Roads—to create separate districts for Senators Lucas and Spruill and simultaneously create three new majority-Black districts.

Making these changes, particularly restoring *all* the majority-Black districts is critical to ensure that past mistakes (*i.e.*, that following the 2019 court-ordered redistricting process) do not become another sad prologue. In 2019, Dr. Bernard Grofman, one of the Court's current Special Masters, redrew a dozen House of Delegates districts pursuant to a court order. His redraw reduced the Black voting-age population in each district. In his work Dr. Grofman has aggressively supported the efforts of Democrats around the nation and their lead counsel, Mark Elias, in advancing the idea of the need to replace majority Black districts with "minority-opportunity districts." This dilution of Black voting power has had serious consequences, most recently in Virginia. Yet, the objections of Black Democrats are ignored and advocates for this new reduction in majority-Black districts deny the outcomes when Black representation shrinks.

The premise that minority-opportunity districts provide minority voters with an opportunity to elect the candidates of their choice similar to that of majority-minority districts is absurd. One need only look to the most recent election in Virginia. Dr. Grofman drew a new map for minority districts in Virginia where he did exactly what is proposed today—he replaced majority-Black districts with minority-opportunity districts. The impact was immediate and unmistakable. In the November 2021 election, following imposition of the new maps, two Black Members of the House of Delegates running in Dr. Grofman's "minority opportunity" districts lost

their reelection campaigns to white candidates, while two additional Black Members lost races in districts where the Black share of the voting-age population was even lower. Dr. Grofman had reduced the Black voting-age population in District 63 from 59.53 to 47.47 percent and in District 75 from 55.43 to 52.45 percent. Delegates Lashrecse Aird and Roslyn Tyler suffered the consequences.

Simply put, before the 2021 elections, the Legislative Black Caucus included fifteen members; four were defeated this year, two in districts where the Black voting-age population was deliberately lowered by Dr. Grofman. As the Special Masters replace majority minority districts with an increasing number of “minority opportunity” districts, the map will further shrink the ranks of the Black Caucus. As demonstrated in 2021, even a Black voting-age population as high as 53 percent—*i.e.*, a number higher than the BVAP in every Senate district on the Senate Democrats’ proposed map—will not necessarily be sufficient to reelect a Black representative. Therefore, Black voting-age populations between 35 and 45 percent, such as those that the Special Masters have created in their “minority opportunity” districts, are indisputably insufficient.

Virginians have spoken and want the Commonwealth to do more to empower the Commonwealth’s Black community as well as our Black legislators. Eliminating virtually all of Virginia’s majority-Black Senate districts and likely the entire Senate Black Caucus if the consequences are the same as the November elections in the House of Delegates—has the opposite effect. We will truly suffer from the loss of our colleagues in the Black caucus should that result from elimination of their majority-Black districts. They hold key positions of leadership and represent relationships we deeply value. Their districts have become unfair targets and we hope that the Court will act to prevent their loss.

The changes proposed in the Senate Republican Caucus's map restore the number of majority-Black districts that currently exist and as a consequence, the Legislative Black Caucus will continue to exist throughout the next decade. For that reason, we urge the Court to recognize the devastating impact of districts re-drawn in 2019 and ensure that those mistakes are not repeated.

II. THE SENATE DEMOCRATIC CAUCUS'S PROPOSED MAP IS SUBSTANTIALLY INFERIOR TO THE SPECIAL MASTERS' PROPOSED SENATE MAP.

A. The map submitted by the Senate Democratic Caucus is a partisan gerrymander.

The changes proposed by the Senate Democratic Caucus represent an aggressive effort to increase the number of Democratic seats in the Senate. In short, it is a partisan gerrymander to yield the highest number of seats for Democrats. Even though Governor-elect Glenn Youngkin won the most recent Virginia-wide election with a majority of the vote, he would have won only sixteen of the Senate Democratic Caucus's redrawn districts, or 40 percent of the total. In other words, the Senate Democratic Caucus proposes morphing a chamber whose membership currently hovers close to parity by pushing it in a direction that decisively favors their own party.

There are five districts in which the Senate Democratic Caucus's proposed changes have a notable partisan effect: Districts Four, Sixteen, Twenty, Twenty-Four, and Thirty-One. The Special Masters' proposed District Four is centered on the Cities of Roanoke and Salem and their southern and western suburbs. The Senate Democratic Caucus proposes shifting some of these Roanoke County suburbs into the adjacent Seventh District in order to move the Virginia Tech campus in Blacksburg into the Fourth. They claim that Blacksburg has substantial common ties with Roanoke that the Special Masters failed to recognize, like a shared airport. SDC Mem. at 10. This, however, requires a reasonable observer to believe that the City of Roanoke has more meaningful ties with a town more than forty miles away and on the other side of a mountain than it does with the people who live in its immediate suburbs and work in Roanoke itself. The more

likely impetus for this change was the Senate Democratic Caucus's desire to consolidate college students in Blacksburg with urban voters in Roanoke in the hope that this *might* be sufficient to net them a Democratic-leaning district. This claim beggars belief and should be rejected.

The Senate Democratic Caucus expresses concern over the treatment of Senate President Pro Tempore Louise Lucas and proposes redrawing her district's boundaries to create separate districts for Senators Lucas and Spruill. We agree with this goal, but the Senate Democratic Caucus's proposal is not the only way—or the best way—to accomplish it. Their plan would save Senator Lucas by shifting the entire City of Portsmouth, where she resides, into her Seventeenth District, while readjusting Senator Spruill's District Eighteen to cover downtown Norfolk. This creates two districts that are not particularly compact, but it is a sensible enough revision to protect the two incumbents.

But why does the Senate Democratic Caucus simultaneously propose redrawing the boundaries of three other Hampton Roads districts, including shifting the center of population of District Twenty from suburban Virginia Beach ten miles west to Norfolk? That change has nothing to do with protecting any of our esteemed colleagues, and residents of the Eastern Shore would be perplexed to learn that they have more in common with geographically distant Norfolk than next-door Virginia Beach due to their “median incomes significantly below Virginia’s statewide median” and similar “poverty rates.” SDC Mem. at 5-6. Instead, District Twenty was transplanted into Norfolk to transform the competitive district drawn by the Special Masters into a solidly Democratic one. There is no nonpartisan justification for their proposed change to District Twenty.

There is also no reasonable explanation for the Senate Democratic Caucus's proposed changes to Districts Twenty-Three and Twenty-Four in Newport News. They unleash a grab bag of ostensible reasons why Hampton and Poquoson constitute a single community of interest,

including the fact that they are “Atlantic facing” and were “developed as hubs for watermen fishing.” SDC Mem. at 15-16. They do not, however, reference the *current* status of either of the two cities, and for good reason: Looking at the cities today, it is clear that little connects them beyond their shared geography. Hampton is a thriving urban area that is home to Virginia’s preeminent HBCU and the young college students that attend it, whereas Poquoson is a sleepy suburb of York County populated mostly by families. Poquoson’s primary thoroughfare, Highway 171, runs west into York County, not south into Hampton. And, Poquoson and York County share a Sheriff, Commonwealth’s Attorney, Clerk of Circuit Court, and Courthouse.

Looking at the two cities’ demographic data provides a clue as to what is going on here: Poquoson is 95 percent white and heavily Republican, whereas Hampton is 50 percent Black and heavily Democratic. Hence, by swapping conservative Poquoson for the more liberal precincts of Newport News along Highway 143, the Senate Democratic Caucus’s map successfully nudges District Twenty-Four into the Democratic column. They accomplish this by reducing the Black voting-age population in one of only two majority-Black districts drawn by the Special Masters, District Twenty-Three.

Finally, the Senate Democratic Caucus proposes a few relatively minor changes to Districts Thirty-One and Sixteen. In Thirty-One, they shift a rural precinct west of Warrenton out of the district and move a few suburban precincts from eastern Loudoun County in; in Sixteen, they swap a handful of precincts with the adjacent Richmond-centered District Fourteen. But even small changes can have a meaningful impact in districts as competitive as these, and the changes urged by the Senate Democratic Caucus would nudge both of those districts into the Democratic column. It is difficult to argue that the affluent precincts abutting Stone Hill Middle School have more in common with rural Fauquier County than with the other similarly suburban precincts contained in

District Thirty-Two where the Special Masters placed it, but that is the claim that the Senate Democratic Caucus makes. This effort should be recognized for what it is: a further attempt to take competitive districts drawn by the Special Masters and flip them into districts that elect Democrats.

This clarifies that the Senate Democratic Caucus's proposal is not about protecting incumbents who are personally important to the communities they represent. Instead, it is about creating a map that is substantially more favorable to the Democratic Party. The Senate Democratic Caucus has moved heaven and earth on their map in seven separate regions of the state to allegedly protect two incumbents and consolidate fictional communities of interest. This Court need not, and should not, be persuaded by this veiled attempt at a Democratic gerrymander.

B. The Senate Democratic Caucus's map violates Section 2 of the Voting Rights Act without additional majority-minority districts, and their analysis of the law is in error.

According to the Senate Democratic Caucus, both the Special Masters' proposed Senate map and their own comply with Section 2 of the Voting Rights Act because they give "greater Richmond" an "additional district" that allows "the region's African American citizens the opportunity to elect a candidate of their choice ('minority opportunity district')." SDC Mem. At 7. That is incorrect. When Section 2 applies, it requires the creation of majority-minority districts—*i.e.*, districts in which a minority community accounts for more than 50 percent of the voting-age population. Stated differently, "In majority-minority districts, a minority group composes a numerical, working majority of the voting-age population. Under present doctrine, § 2 can require the creation of these districts." *Bartlett v. Strickland*, 556 U.S. 1, 13 (2009). Because both the Senate Democratic Caucus's proposed map and the Special Masters' proposed map substantially *reduce* the number of majority-minority districts throughout the Commonwealth, these districts likely do not satisfy Section 2's mandates.

To trigger Section 2 liability, “a minority group” must be “sufficiently large and geographically compact *to constitute a majority*” in a hypothetical district. *Thornburg v. Gingles*, 478 U.S. 30, 50 (1986) (emphasis added). Next, the minority group must be “politically cohesive.” *Id.* at 51. Finally, the “the white majority” must vote “sufficiently as a bloc to enable it . . . to defeat the minority’s preferred candidate.” *Id.*

Where, as here, all three Section 2 criteria apply in numerous areas throughout Virginia, the solution is *not* (as the Senate Democratic Caucus would have it) to create “minority opportunity districts.” SDC Mem. At 7. Indeed, the United States Supreme Court has held that Section 2 “requires more than the ability to influence the outcome between some candidates.” *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 445 (2006) (Kennedy, J., plurality). Further, the Supreme Court has held that “Section 2 does not impose on those who draw election districts a duty to give minority voters the most potential, or the best potential, to elect a candidate by attracting crossover voters.” *Bartlett*, 556 U.S. at 15. The Commonwealth cannot evade Section 2 liability with districts that are anything less than majority-minority.

The Court’s precedent is clear—Section 2 imposes a “majority-minority requirement.” *Id.* at 16. The Senate Democratic Caucus is, accordingly, wrong in its assertion that their map (as well as the Special Masters’ map) complies with Section 2 because they opt for “minority-opportunity” districts. For this reason, their map is fatally flawed and should not be adopted by the Court.

We are not the first body this redistricting cycle to recognize the need (morally, and legally) to maximize the number of majority-minority districts. Less than a week ago, the Michigan Department of Civil Rights issued a formal statement announcing, bluntly, that Michigan’s

proposed maps “Violate the Voting Rights Act” and “Must be Redrawn.”¹ It reached this conclusion because “none of the five Congressional District maps proposed . . . includes a majority Black district,” even though Michigan currently has two, and “four State Senate Districts that are currently majority Black would be eliminated” in most of the proposed Michigan state Senate maps.² This reduction, according to the Michigan Department of Civil Rights, “may lead to forbidden retrogression in minority voting strength” and, accordingly, would violate federal law because “[e]lection district maps cannot be drawn that will impair the ability of geographically insular and politically cohesive groups of Black voters to participate equally in the political process and to elect candidates of their choice.”³

We agree with our Michigan brethren: Any “act that reduces minorities’ opportunity to participate in the political process and to elect representatives of their choice is a violation of the Voting Rights Act, 42 USC § 1973(b).”⁴ And we ask this Court to recognize here what the Michigan Department of Civil Rights has recognized in their State: reducing—indeed, virtually abolishing—all majority-Black districts not only contravenes Section 2 of the Voting Rights Act but also violates commonsensical notions of how to maximize Black political empowerment. What follows necessarily from the recognition, however, is a declination of the Senate Democratic Caucus’s retrogressive proposal.

¹ See Michigan Department of Civil Rights: MICRC Maps Violate the Voting Rights Act, Must be Redrawn, *available at* <https://www.michigan.gov/som/0,4669,7-192-47796-574023--,00.html>.

² *Id.*

³ See John E. Johnson, Jr., *Analysis of MICRC’s Proposed Maps*, MICHIGAN INDEPENDENT CITIZENS REDISTRICTING COMMISSION (Dec. 9, 2021).

⁴ *Id.*

III. THE SENATE REPUBLICAN CAUCUS SEEKS STABILITY IN THE REDISTRICTING PROCESS AND A MINIMUM OF DISRUPTION FOR VOTERS AND THE LEGISLATIVE PROCESS.

The Senate Republican Caucus is eager for a redistricting outcome that leads to stability in future elections and a minimum of disruption in the orderly functioning of the legislative process. Therefore, to the disappointment of many, our caucus chose not to provide the Court with a dream Republican map. Instead, we have provided a proposal with the fewest revisions possible to improve the map, while also providing clarity on the Senate map produced by our Democratic colleagues.

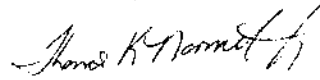
We also feel strongly that we should address what we believe will lead to challenges under the Voting Rights Act. Those changes are critical to uphold the maps and critical to respond to the concerns of our voters.

We have consistently advocated for fair maps and we believe that the Special Masters actually worked to produce maps that were more fair and more compact. Certainly, it demonstrated a true act of independence and fairness that incumbent legislator addresses were omitted from consideration and virtually every member of the Senate was drawn into a district with another Senate colleague. While in concept that may seem inconsequential, enacting a map with nearly one half of the members of the Virginia State Senate paired with another is somewhat contrary to the intended outcome of this process and inconsistent the Constitution of this Commonwealth's structure. The Constitution contemplates a structure to in which incumbency is taken into consideration in order to preserve continuity. Four-year Senate terms are set for re-election in years when statewide offices are not up for election, and without term limits in the Constitution, it is clear that the Virginia Senate is established to provide long term stability to the Commonwealth's government. We hope the Court adopts a map that upholds this structure of our Commonwealth's

Constitution, and directs its Special Masters to conform their map to this important tenet of Virginia's government.

We appreciate your consideration of our comments above and the map that we submit for you today. With kindest regards, I remain

Very Truly Yours,

A handwritten signature in cursive script, appearing to read "Thomas K. Norment, Jr.", written in dark ink.

Thomas K. Norment, Jr.
Republican Leader
Senate of Virginia